

Message Text

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INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03

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COME-00 TRSE-00 FRB-03 JUSE-00 SAM-01 SAB-01 IO-11

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FM AMEMBASSY BONN

TO SECSTATE WASHDC 5899

INFO USMISSION USBERLIN

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E.O. 11652: N/A

TAGS: EIND, EMIN, GW, EC

SUBJ: MAJOR WEST GERMAN FIRMS CONVICTED FOR PRICE-
FIXING

1. SUMMARY: THE FRG FEDERAL CARTEL OFFICE HAS CONCLUDED AN INVESTIGATION OF THE REFINED STEEL INDUSTRY WHICH RESULTED IN THE ASSESSMENT OF FINES TOTALLING OVER 2.3 MILLION DM AGAINST SEVEN MAJOR WEST GERMAN MANUFACTURERS, THIRTEEN HIGH OFFICIALS OF THESE FIRMS, AND TWO OFFICIALS OF THE STEEL INDUSTRY MANUFACTURERS' ASSOCIATION. INDUSTRIAL QUIESCENCE AFTER THESE RELATIVELY SEVERE PENALTIES SUGGESTS THAT AN AGREEMENT HAD BEEN REACHED WHEREBY THE CONVICTED PARTIES ACCEPTED REDUCED PENALTIES TO AVOID FURTHER LITIGATION WHICH WOULD PROVE EXPENSIVE TO BOTH SIDES. ADDITIONAL PROSECUTION SEEMS LIKELY, HOWEVER, AS THE EC COMMISSION IS CONCLUDING ITS OWN PARALLEL INVESTIGATION

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OF THIS CARTEL. END SUMMARY.

2. THE GERMAN PRESS, PARTICULARLY DER SPIEGEL, HAS DESCRIBED A WIDE-RANGING PRICE-FIXING CARTEL WHICH HAD BEEN OPERATING FOR AT LEAST FOUR YEARS AMONG SEVEN OF WEST GERMANY'S LEADING MANUFACTURERS OF REFINED STEEL. THE CARTEL FUNCTIONED WITH THE KNOWLEDGE AND SUPPORT OF THE ASSOCIATION OF REFINED STEEL MANUFACTURERS, AND CONTAINED THE FIRMS THYSSENS, KRUPP, SUDWESTFALEN STEEL WORKS, EDELSTAHLWERK WITTEN, BUDERUS, KLOCKNER AND ROCHLING-BURBACH. THE CARTEL PERMEATED THE ENTIRE INDUSTRY, INCLUDING SUPPLIER AND DISTRIBUTOR SYSTEMS, AND ENDED, IN THE WORDS OF FEDERAL CARTEL OFFICE PROSECUTOR SIEGFRIED KLAUE, "ONLY WITH THE CONSUMER WHO HAD TO PAY THE BILL."

3. ACCORDING TO PRESS ACCOUNTS, THE INVESTIGATION BEGAN SOMETIME AFTER AUGUST 1974 WHEN A COPY OF A LETTER FROM AN OFFICIAL OF THE SUDWESTFALEN STEEL WORKS TO THE MANAGING DIRECTOR OF THE ASSOCIATION OF REFINED STEEL MANUFACTURERS PROPOSING THE ESTABLISHMENT OF A NEW PRICING STRUCTURE FOR SHEET STEEL AND CERTAIN STEEL ALLOYS WAS SENT ANONYMOUSLY TO KLAUE. CARTEL OFFICE INVESTIGATORS, ARMED WITH FEDERAL SEARCH WARRANTS, DESCENDED ON THE HEAD OFFICES OF THREE OF THE PRINCIPAL FIRMS AND THAT OF THE MANUFACTURERS' ASSOCIATION IN FEBRUARY 1975. FROM A STUDY OF THE CONFISCATED RECORDS AND COMPANY DOCUMENTS THE INVESTIGATORS TURNED UP EVIDENCE WHICH LED TO THE INDICTMENT OF ALL SEVEN FIRMS, LEADING OFFICIALS OF THESE FIRMS, AS WELL AS THE TWO TOP DIRECTORS OF THE MANUFACTURERS' ASSOCIATION.

4. THE ASSOCIATION WAS A MAJOR LINK IN THE SUCCESSFUL FUNCTIONING OF THIS CARTEL. AFTER A MEMBER FIRM HAD AGREED UPON A PRICE FOR ONE OF ITS PRODUCTS, A PRICE MADE SECRETLY BINDING BY THE FIRM'S BOARD OF DIRECTORS, THE ASSOCIATION RECORDED THE PRICE AND RELAYED THIS INFORMATION TO ALL THE OTHER MEMBER FIRMS. DETAILS OF MARKET ALLOCATION, DISTRIBUTION SYSTEMS AND REBATES FOR MAJOR CUSTOMERS WERE ALSO MAINTAINED BY THE ASSOCIATION. BEFORE ANY BINDING PRICE COULD BE CHANGED, LIMITED OFFICIAL USE

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COMPREHENSIVE DISCUSSIONS WERE HELD BETWEEN THE MANUFACTURING FIRM AND THE MOST IMPORTANT CUSTOMERS, UNDER THE AUSPICES OF THE ASSOCIATION, DURING WHICH SECRET REBATES WERE WORKED OUT TO EASE FOR FAVORED CUSTOMERS THE EFFECTS OF THE HIGHER PRICES.

5. THE CARTEL OFFICE SET PENALTIES ACCORDING TO THE SIZE OF EACH CONVICTED COMPANY'S MARKET SHARE. THUS,

THYSSEN AND THE SUDWESTFALEN STEEL WORKS, THE TWO
LARGEST MANUFACTURERS, EACH RECEIVED FINES OF
425,000 DM; WHEREAS THE FIRM WITH THE SMALLEST INDUSTRY
SALES, KLOCKNER, WAS FINED 125,000 DM. INDIVIDUAL FINES
RANGED FROM 40,000 DM EACH FOR THE DIRECTORS OF
THYSSEN, SUDWESTFALEN, WITTEN AND KRUPP, DOWN TO
15,000 DM FOR THE MANAGING DIRECTOR FOR SALES OF
KLOCKNER. THE DIRECTORS OF THE MANUFACTURERS'

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ASSOCIATION WERE FINED 15,000 AND 10,000 DM.

6. THE CONVICTED FIRMS DID NOT APPEAL THE CONVICTIONS
IN AN APPARENT EFFORT TO MINIMIZE UNPLEASANT
PUBLICITY, AND PROBABLY TO AVOID A LENGTHY AND EXPENSIVE
ROUND OF LITIGATION. AN OFFICIAL OF THE FRG MINISTRY

OF ECONOMICS CONCERNED WITH RESTRAINT OF TRADE
LEGISLATION, EXPRESSED THE PRIVATE VIEW THAT A DEAL HAD
BEEN STRUCK BETWEEN THE DEFENDANTS AND THE FEDERAL
CARTEL OFFICE WHEREBY THE ANNOUNCED PENALTIES,
RELATIVELY SEVERE AS THEY WERE, PROBABLY REPRESENTED A
COMPROMISE BETWEEN WHAT THE CARTEL OFFICE HAD INITIALLY
IMPOSED AND WHAT THE CONVICTED FIRMS AND OFFICIALS
HAD OFFERED. THE OFFICIAL OPINED THAT IT WAS IN THE
BEST INTERESTS OF BOTH PARTIES TO AVOID PROTRACTED
AND PROBABLY ACRIMONIOUS LITIGATION. THIS POINT IS
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ESPECIALLY SIGNIFICANT IN THAT ALL THE CONVICTED PARTIES
FACE FURTHER AND POSSIBLY MORE SEVERE PENALTIES IN THE
NEXT FEW MONTHS WHEN THE EC COMMISSION WHICH HAS BEEN
AWARE OF THE CARTEL OFFICE INVESTIGATION FROM THE
BEGINNING, CONCLUDES ITS OWN PARALLEL INVESTIGATION.
IN PRESS STATEMENTS, REPRESENTATIVES OF THE FIRMS HAVE
SOUGHT TO SEPARATE THE CARTEL OFFICE AND THE EC
COMMISSION INVESTIGATIONS MAINTAINING THAT WHILE THEY
WERE GUILTY OF VIOLATIONS OF FRG LAW, THEIR PRICE-FIXING
AND REBATE SYSTEM WAS NOT IN VIOLATION OF EC POLICY.
AND, SINCE ALMOST 80 PERCENT OF THE PRODUCTS IN QUESTION
WERE MARKETED IN EC COUNTRIES OTHER THAN WEST GERMANY,
THEREFORE ONLY A SMALL PORTION OF THEIR FIRMS TRANS-
ACTIONS HAD BEEN ILLEGAL. ON THIS POINT, THE ECONOMICS
MINISTRY OFFICIAL COMMENTED THAT ALTHOUGH THERE ARE
DIFFERENCES BETWEEN FRG AND EC COMPETITION LAW, THE
CONVICTED FIRMS WERE ALSO CLEARLY IN VIOLATION OF MANY
EC LAWS, AND FURTHER PENALTIES WILL ALMOST CERTAINLY
RESULT.
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